

**VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
THE CITY OF CHESAPEAKE**

SECTION A: Purpose

This is a consent order issued under the authority of ' ' 10.1-1182 *et seq.*, 10.1-1402, 10.1-1185, 10.1-1405.B., and 10.1-1455.C. and F. of the Code of Virginia (1950) as amended, between the Virginia Waste Management Board and the City of Chesapeake, for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. ACode@ means the Code of Virginia (1950), as amended.
2. ABoard@ means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code ' ' 10.1-1401 and 10.1-1184.
3. ADEQ@ or "Department" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. ADirector@ means the Director of the Department of Environmental Quality.
5. ARegional Office@ means the Tidewater Regional Office of the Department.
6. AOrder@ means this document, also known as a consent order.

7. "Regulations" means the Virginia Hazardous Waste Management Regulations (VHWMR, 9 VAC 20-60-12 *et seq.*) The specific provisions of Title 40 of the Code of Federal Regulations cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.
8. "CFR" means the Code of Federal Regulations.
9. "City" means the City of Chesapeake, owner of the property located at 930 Hollowell Lane.
10. "Facility" means the property located at 930 Hollowell Lane.

SECTION C: Findings of Facts and Conclusions of Law

1. The City owns the property located at 930 Hollowell Lane in Chesapeake, Virginia. The City's Public Works Department has been using the Facility for storage.
2. On October 31, 2000, the City reported two 55-gallon drums were unearthed at the Facility during the installation of a radio tower foundation. The City sampled the drum contents to determine if the drums contained a hazardous waste pursuant to the VHWMR. The November 8, 2000, laboratory results revealed the drum contents exhibit the toxicity and ignitability characteristic of a hazardous waste pursuant to 40 CFR 261 Subpart C. (The laboratory results indicate the waste contained 26.94 mg/L of lead and exhibited a flash point of 98° F.)
3. Based on additional information obtained by the City alluding to the burial of wastes at the Facility, the City conducted an Electronic Magnetic/Ground Penetrating Radar survey on November 15-17, 2000. The investigation revealed 77 target areas requiring further investigation. The Facility was visually delineated into four areas labeled A-D. For purposes of remediation, the Facility property boundaries and the location of target areas A-D are specified in a drawing at Appendix B of this Order.
4. From January 1, 2001 to February 27, 2001, the subsurface anomalies identified during the Electronic Magnetic/Ground Penetrating Radar survey at the Facility were excavated. The investigation revealed the following:
 - a. Wastes removed from Area A include construction and demolition debris, waste tires,

and hazardous wastes. The construction and demolition debris includes, but is not limited to, tar balls, metallic objects, drum lids, used tires, concrete with rebar, fence posts, and rubber tubes. The City reports 2 tons of construction and demolition debris and 58 waste tires were removed from Area A.

Waste drums (mostly crushed) containing yellow and white traffic paint were observed and removed for disposal as hazardous waste from Area A. The City reports 167 drums containing greater than 1 inch of visible paint were unearthed. In addition, the City reports 30 tons of waste consisting of empty paint drums, paint stained surrounding soils, and wastes generated during the removal process (i.e., rinse water, sludge, and PPE) were disposed as hazardous waste. For purposes of remediation, Area A will be referred to as Hazardous Waste Management Unit #1.

- b. Wastes removed from Area B consisted mostly of construction and demolition debris including, but not limited to, metal objects (pipes, covers, and beams), concrete pipe with rebar, wire rope, wood debris, metal guard rail, fence post, tar balls, asphalt, plastic debris, and copper pipe. The City reports 65 tons of construction and demolition debris and 35 waste tires were removed from Area B for disposal. Two additional tons of transite piping were removed and disposed as asbestos containing material. A 1-gallon crushed drum containing white paint was removed from Area B. The waste was overpacked for disposal as hazardous waste. For purposes of remediation, the area where this drum was located, is identified as Area B-1, and will be referred to as Hazardous Waste Management Unit #2. Area B-1 is depicted in the drawing at Appendix B of this Order.
- c. Wastes found in Areas C and D consisted mostly of construction and demolition debris including, but not limited to, metal pipes, fence poles, culvert pipe, railroad ties, treated wood, metal sheets, manhole covers, concrete with rebar, rubber strap and hose, fan belt, guard rails, wire, street signs, storm grates, tires, and chain link fencing. The City reports 30 tons of waste from Area C and 33 tons of waste from Area D were removed. Creosol contaminated soils were removed from Area C and packed in ten 55-gallon drums. In addition, 10 waste tires were removed from Area D and disposed.

5. The City sampled the waste paint removed from Area A on January 31, 2001. The TCLP sample results revealed the waste paint contained 15.92 mg/L of lead and 6218.2 mg/Kg toluene. The City reports that toluene may have been used during paint gun cleaning activities and drums of used rags and spent toluene may have been buried in Area A.

6. Hazardous wastes removed from Area A and B-1 were described and manifested for disposal

with the EPA Hazardous Waste Numbers of D001, D007, D008, F005, and F003. As defined at 40 CFR 261.31, EPA Hazardous Waste Number D001 indicates a waste exhibiting the characteristic of ignitability; D007 and D008 indicate a waste exhibiting a toxic characteristic (chromium and lead, respectively); F005 and F003 indicate listed hazardous wastes including spent nonhalogenated solvents from nonspecific sources. Copies of the hazardous waste manifests were provided to the Regional Office.

7. The City reports all solid wastes removed from Areas A-D were disposed at permitted solid waste management facilities. The City provided copies of the disposal receipts to the Regional Office.

8. Neither the Director of the Department, his predecessor-in-interest, nor the Board has ever issued a permit under the VHWMR or the Virginia Solid Waste Management Regulations for operation of the Facility. The City has not applied for or been granted either interim status or a permit for the operation of a hazardous waste treatment, storage, or disposal facility.

9. The Department acknowledges that most of all the visible wastes at the Facility were removed by the City prior to this Order being entered. In addition, the City reports it was conservative in its determination and characterization of hazardous wastes for disposal and may have disposed of non-hazardous materials as hazardous wastes.

10. The Department alleges that operation of the Facility for land disposal of hazardous waste without a permit violated Code § 10.1-1426.A (general permit requirement) and the applicable standards and permit requirements of 40 CFR §§ 264 and 268. The Department alleges that in operating the Facility the City failed to comply with the following requirements: 40 CFR § 262.10, 40 CFR § 262.11 (hazardous waste determination), 40 CFR § 262 Subpart B (manifest requirement), 40 CFR § 262 Subpart C (pre-transport requirements), 40 CFR § 262 Subpart D (record keeping and reporting), 40 CFR § 264 Subpart B (general facility standards), 40 CFR § 264 Subpart C (preparedness and prevention), 40 CFR § 264 Subpart D (contingency plan and emergency procedures), 40 CFR § 265 Subpart E (manifest system, record keeping and reporting), 40 CFR § 264 Subpart F (releases from solid waste management units), 40 CFR § 264 Subpart N, 40 CFR § 264 Subpart G (closure and post-closure), 40 CFR § 264 Subpart H (financial requirements). The Department alleges that: a) failure by the City to notify the Department of the storage and disposal activities at the Facility violated Code § 10.1-1426.B and 9 VAC 20-60-305, 9 VAC 20-60-315, and 9 VAC 20-60-325; b) failure by the City to determine whether the hazardous waste disposed at the Facility was land-restricted waste violated 40 CFR § 268 Subpart A; and c) land disposal by the City of land-restricted waste violated 40 CFR § 268 Subpart C.

11. The Department alleges that operation of the Facility for disposal of solid waste without a permit violated Code §§ 10.1-1408.1.A and 10.1-1408.1.I and 9 VAC 20-80-90.A.1, 9 VAC 20-80-

90.A.2, and 9 VAC 20-80-90.A.3 of the Virginia Solid Waste Management Regulations.

12. The Department alleges that because the Facility received solid waste without a permit, in violation of statutory requirements and the Solid Waste Management Regulations the Facility was classified as an unpermitted facility in accordance with 9 VAC 20-80-200. The City indicates that all solid wastes or solid waste constituents have been removed from the Facility. Accordingly, no further remediation or closure is required in Areas C and D at this time. The Department reserves the right to take any appropriate action authorized by law or regulation, after the effective date of this Order, regarding any solid or hazardous waste discovered within the Facility.

13. Because Area A and B-1 at the Facility received hazardous waste in addition to solid waste, remediation of Area A and B-1 is required under the VHWMR. For the purposes of remediation of portions of the Facility under the VHWMR, Area A and Area B-1 of the Facility shall initially be considered to be a surface impoundment. If closure as specified in Appendix A to this Order is not performed in either Area A and/or Area B-1, the Area(s) for which closure was not performed shall be considered a hazardous waste landfill for purposes of remediation.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code ' ' 10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455, and after consideration of the factors set forth in Va. Code ' 10.1-1186.2, orders the City, and the City agrees to perform the actions described in Appendices A and C of this Order. In addition, the Board orders the City, and the City voluntarily agrees, to pay a civil charge of \$ 160,000.00 in settlement of the violations cited in this Order.

1. \$40,000.00 of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include the City's Federal ID Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. \$120,000.00 of this civil charge shall be satisfied upon completion of a Supplemental Environmental Project ("SEP") pursuant to Virginia Code ' 10.1-1186.2 and as described in Appendix C of this Order.

3. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.
4. Should the Department determine that the SEP has not been completed in a satisfactory manner, the Department shall notify the City of such determination in writing. Within 30 days of such notification, the City shall pay the amount specified in Paragraph 2 above in accordance with the procedures specified in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the City, for good cause shown by the City, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For the purposes of this Order and subsequent actions with respect to this Order, the City admits the jurisdictional allegation, factual findings, and conclusions of law contained herein.
4. The City consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The City declares it has received fair and due process under the Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code ' ' 10.1-1400 *et seq.*, and waive their right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The City must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the Director and the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City. Termination of this Order, or of any obligation imposed in this Order, shall not relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. This Order shall become effective upon execution by both the Director or his designee and the City.

Robert G. Burnley, Director
Department of Environmental Quality

Date

Seen and Agreed to:

Commonwealth of Virginia
City of Chesapeake

The foregoing instrument was acknowledge before me this _____ day of _____, 2002, by _____, on behalf of the City of Chesapeake.

(Date)

(Notary Public)

My Commission expires:_____

(Seal)

APPENDIX A
SCHEDULE OF COMPLIANCE

1. The City shall not treat, store, or dispose of hazardous and solid waste, except in accordance with the VHWMR and the VSWMR, in accordance with a permit or an emergency permit issued by the Department for such activity.
2. Within 60 days of the effective date of this Order, the City shall submit the following to the DEQ:
 - a. An accelerated groundwater monitoring plan for Hazardous Waste Management Units #1 and #2 that meets the requirements of 40 CFR 264 Subpart F, modified as necessary to meet the closure performance standard of 40 CFR 264.111. The DEQ shall approve, or modify and approve, this plan in accordance with the VHWMR. The City shall implement this plan within 30 days of receipt of the DEQ's written notice of approval
 - b. A plan for closure by removal or decontamination of all waste residues, contaminated system components (i.e., liners, etc.), contaminated subsoils, and structures, and equipment contaminated with waste and leachate shall be submitted for Hazardous Waste Management Units #1 and #2 at the Facility. This plan shall meet the requirements of 40 CFR 264 Subpart G. Please refer to 40 CFR 264.228(a)(1) for the requirements for closure by removal or decontamination of Hazardous Waste Management Units #1 and #2. The DEQ shall approve, or modify and approve, these plans in accordance with the VHWMR.
 - c. Contingent closure and contingent post-closure plans, prepared in accordance with 40 CFR 264 Subpart G, and 40 CFR 264.310 for Hazardous Waste Management Units #1 and #2 at the Facility in the event the City is unable to satisfy the requirements for closure by removal or decontamination of all waste residues per 40 CFR 264.228(a)(1). The DEQ shall provide for public notice, and shall approve, or modify and approve, these plans in accordance with 40 CFR 265.112(d)(4).
 - d. Evidence of financial assurance in accordance with 40 CFR ' 264 Subpart H Hazardous Waste Management Units #1 and #2 at the Facility. The City shall modify the amount of such financial assurance as necessary in response to any modifications of the closure plan approved of by the Department.
3. Upon receipt of DEQ's written notice of approval, the City shall complete closure of the units in

accordance with the schedule in the approved closure and contingent closure plans.

4. If Hazardous Waste Management Units #1 and #2 are closed in accordance with the approved closure plan, the City shall provide the DEQ owner/operator and professional engineer certifications as required by 40 CFR 264.115. If closure in accordance with the closure plan cannot be achieved (i.e., "clean closure"), the City shall immediately notify the DEQ of this fact and implement the approved contingent closure and contingent post-closure plans as applicable. That notification shall constitute a determination that Hazardous Waste Management Units #1 and #2 must be closed as a landfill in accordance with 40 CFR ' 264.310. Within 30 days of such determination, the City shall submit evidence of financial assurance for contingent plans for closure and post-closure care as a hazardous waste landfill in accordance with 40 CFR ' 264 Subpart H. The City shall modify such financial assurance as necessary in response to any changes approved by the Department in the closure and/or post-closure plans.

5. Within 180 days of the City's notification to the DEQ that closure in accordance with the closure plan cannot be achieved and/or it cannot be demonstrated that groundwater contaminate levels are below risk based levels, the City shall submit to the DEQ a permit application and required application fees, for groundwater monitoring, Corrective Action and, if applicable, post-closure care pursuant to 40 CFR 264 Subpart F, 40 CFR 264.117 through 264.120, 40 CFR 264 Subpart N, 40 CFR 270.1, 40 CFR 270 Subpart B, 9 VAC 20-60-970 and -980. At the same time the City will modify the groundwater monitoring plan for Hazardous Waste Management Units #1 and #2 as necessary to meet the requirements of 9 VAC 20-60-1010.L. This plan must include a proposed schedule for obtaining an initial 40 CFR Part 264 Appendix IX sampling upon which the modifications necessary under 9 VAC 20-60-1010.L. referenced above shall be based.

- a. The DEQ shall approve, or modify and approve this program in accordance with the VHWMR.
- b. Following the completion of closure and until a permit is issued, the City shall follow the approved post-closure plan and the modified groundwater monitoring plan, as applicable, referenced above.

6. The City shall respond to any Notice of Deficiencies issued with respect to the groundwater monitoring plan, the closure and post-closure plans, and/or the permit application by the time period provided in the Notice unless the City has both requested and received an extension(s). If an extension(s) is granted, failure to respond by the end of the extension constitutes failure to respond to the Notice of Deficiency and may constitute a violation of this Order.

7. Original financial assurance documentation, as required by Paragraph 4. above, shall be forwarded directly to Renee T. Hooper, Office of Financial Assurance, Virginia Department of

Consent Order
The City of Chesapeake
Page 12 of 17

Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009. All other submittals required by this Order shall be forwarded to Francis L. Daniel, Regional Director, Tidewater Regional Office, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462.

APPENDIX B

Facility Map Indicating Areas A-D

APPENDIX C
SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The SEP to be performed by the City is developing and implementing an Environmental Management Program ("EMP") and a Pollution Prevention Program for the City to include, at minimum, the following components:

- a. Create and staff an Environmental Quality Program Manager position to assist in the development and implementation of the EMP. Provide applicable training as required.
- b. Purchase computer software to track and measure the effectiveness of the EMP and the Pollution Prevention Program.
- c. Develop an Environmental Policy and Procedures Manual. A copy of the draft manual must be submitted to the Department for approval within 18 months of the effective date of this Order. The Manual must, at minimum, include the following items:
 1. An environmental policy statement, outlining the City's commitment to the environment;
 2. Identification of the City's actual or potential impacts to the environment from current or future activities and establishment of objectives, targets, and procedures for addressing them;
 3. A pollution prevention program, including its achievements, objectives, and goals;
 4. Identification of the City's environmental legal requirements and a mechanism for tracking changes in environmental compliance requirements;
 5. A description of how the City defines, documents, and maintains roles, responsibilities, and authorities for its environmental management system;
 6. Procedures for reporting and record keeping to document the status of environmental management system operations and activities;
 7. Procedures for ensuring that facility employees have necessary training;
 8. Emergency response procedures for responding to, reporting, mitigating, and reviewing incidents;
 9. Monitoring, investigative and corrective actions for noncompliance with the environmental management system;
 10. Voluntary self assessments; and
 11. Procedures to communicate with and inform external and internal audiences.
- d. Assess pollution prevention opportunities within the City and select a project(s) for implementation. The City will submit a copy of the draft pollution prevention assessment and opportunities report to the Department for approval within 18 months of the effective date of this Order. The report must include, at minimum, the following components:

1. The City's organizational commitment to pollution prevention;
 2. Collection/documentation of baseline information;
 3. Pollution prevention opportunities assessment;
 4. Prioritization of opportunities;
 5. Development of a system to document, track, and measure resources, emissions, and waste;
 6. Establishment of goals, objectives and an implementation schedule; and
 7. Measurement of program progress/success.
- e. Develop and conduct basic pollution prevention training for municipal employees.
 1. The City will provide to the Department for approval a copy of a draft training materials prior to conducting the training.
 2. The City must complete the training December 31, 2003.
- f. Develop and conduct stormwater pollution prevention training for applicable municipal employees.
 1. The City will provide to the Department for approval a copy of a draft training materials prior to conducting the training.
 2. The City must complete the training by December 31, 2002.
- g. Develop and implement a Hazardous Material Operating Plan for the City.
 1. A copy of the draft plan must be submitted to the Department for approval within 9 months of the effective date of this Order.
 2. The plan must outline measures to reduce hazardous materials by 5% by the year 2004.
2. The Department will approve, approve with comments, or disapprove the submissions described in Paragraph 1. c., d., e., f., and g. above. Disapproval of submissions is in the sole discretion of the Department. In the event the Department disapproves of a submission, within 30 days of being notified, the City shall pay the corresponding amount specified in Paragraph 3 below in accordance with the procedures specified in Section D. 1. of this Order.

3. The projected expenditures for each SEP component are set forth below:

TASK DESCRIPTION	COST
1. Environmental Quality Program Manager Position Salary & Benefits	\$58,124
2. Training for EQPM	\$ 1,000
3. Compliance Assessment Software	\$ 7,850
4. Environmental Policy and Procedures Manual	\$25,000
5. P2 Opportunities Assessment and Project Selection	\$15,000
6. Develop and Conduct P2 Basic Training	\$ 5,000
7. Develop and Conduct Stormwater Pollution Prevention Training	\$ 7,000
8. Develop and Implement a Hazardous Material Management Operating Plan	\$ 5,000

4. The SEP components shall be completed as specified in Paragraph 1 above, but no later than June 30, 2004.

5. The City certifies that they have not commenced performance of the SEP prior to the identification of the violations cited in the Order and the approval of the SEP by the Department.

6. The total net cost of the SEP to the City shall not be less than \$ 120,000.00. The total cost of each component of the SEP shall not be less than 10% of the amounts set forth in Paragraph 3, but in no event shall the total cost of the SEP be less than \$120,000.00. In the event that the final net cost of the SEP is less than this amount, the City shall pay the remainder of the amount in accordance with Paragraph D.1. of this Order to the Commonwealth of Virginia, unless otherwise agreed to by the Department. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.

7. The City acknowledges that it is solely responsible for completing the SEP. Any transfer of funds, tasks, or otherwise by the City to a third party, shall not relieve the City of its responsibility to complete the SEP as contained in the Order.

8. The City shall submit written verification to the Department in the form of certified statements itemizing costs, invoices, proof of payment, or similar documentation of the final overall and net cost of the SEP prior to final SEP completion approval by the Department. Such verification shall be submitted to the Department no later than October 31, 2004.

9. In the event that the City publicizes the SEP or the results of the SEP, the City shall state in a prominent manner that the project is part of a settlement for an enforcement action.

10. Documents to be submitted to the Department, other than the civil charge payment and financial

assurance documentation described in Section D and Appendix A of this Order, respectively, shall be sent to Frank Daniel, Regional Director, DEQ Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462.